

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 539 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----

AVANITBHAI KANTILAL SHAH

Versus

NATVARSINH NARARSINH MAHIDA

-----

Appearance:

MR MB GANDHI for Petitioners

SERVED for Respondent No. 1

MR KS JHAVERI for Respondent No. 2

MR HASIT DILIP DAVE for Respondent No. 4

-----

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 08/10/96

ORAL JUDGEMENT

The appellants are the original applicants who have filed the claim petition for Rs. 2,50,000/- in respect of the accident of their daughter, Alpaben at about 7.30 pm on 2nd September, 1991, in Motor Accident Claims Tribunal, district Kheda at Nadiad. The said claim petition was presented on 14th September,

1992. There was therefore, delay of about 6 months and 12 days and as such the Misc. Application No.141/92 was filed for condonation of the said delay contending inter alia that one Mr. V.S.Patel who presented himself to be an advocate, had accepted the brief and later on, had gone away to America. According to the appellants there was sufficient cause to condone the delay.

2. The learned Judge of the Motor Accident Claims Tribunal, Nadiad, by the impugned order dated 14th March, 1995 dismissed the application with cost, holding that the period of limitation under section 166(3) of the Motor Vehicles Act provided only for 6 months and in proviso, the power of condonation of delay is provided by additional period of 6 months only and the tribunal was not competent to condone the delay beyond the said period of 12 months. The present appeal is preferred against the said judgment of the tribunal dismissing the application for condonation of delay.

3. It appears that the tribunal while dismissing the application is oblivious of the fact that the provisions of sub-section 3 of section 166 of Motor Vehicles Act is no longer on statute. The said provision of section 166(3) has been repealed by section 53 of the Motor Vehicles (Amendment) Act, 1994 which has come into force w.e.f. November 14, 1994. In fact and in effect, the resultant effect of the amendment would be that there is now no limitation for filing claims before the tribunal in respect of any accident. The Parliament in its wisdom appears to have realised the gross and grave injustice and injury which was being caused to the heirs and the legal representatives of the victims who succumbed to the injuries in accidents by dismissing the claim applications only on ground of limitation. Majority of the claimants for such compensation would not be aware about the period during which such claims should be preferred. In many more cases, where the deceased or the victim in the accident would be bread earner of the family and the claimants are practical without any source of livelihood. Similarly, the victims of such accidents would be hospitalised for months together experiencing real hardships in meeting both the ends. The legislature in its wisdom rightly repealed the provisions of prescribing a period of limitation and thereby restricting the power of tribunal to entertain the claim petitions beyond the period of 12 months on the date of accident.

4. It was contended on behalf of the respondent that when the claim petition was filed the provision of

section 166(3) was operating and the period of limitation would apply to such application and under the proviso of sub-section 3 and the proceedings involving the question whether the delay could be condoned, was pending before the tribunal at the relevant time. It is true that the claim petition was preferred on 14th September, 1992 alongwith the application for condonation of delay therein. However, when the application for condonation of delay came to be decided and disposed off, the provision of sub-section 3 of section 166 stood repealed. In other words, at the time of dismissal of the delay condonation application, the provision of section 166(3) was no longer operative. Therefore, the benefit of the repeal would be available to the claimants and the petition could not have been dismissed on the ground at the time of its filing it was barred by limitation under sub section 3 of section 166.

5. There is another facet of the issue. It appears that sub-section 3 of section 166 of the Motor Vehicles Act ( 59 of 1988) has been deleted with retrospective effect. However, at the same time, there is nothing in the Amending Act to suggest that the benefit of deletion of section 166(3) is not to be extended to the pending claim petitions where the plea of limitation has been raised. A claim petition preferred after 14th November, 1994 cannot be dismissed by the tribunal on the ground of limitation stating that the period of 12 months which was prescribed when section 166(3) was in force, has expired and a right to prefer claim petition has been extinguished and shall not be revived after deletion of section 166(3) from 14th November, 1994. When the provision of section 166(3) has been repealed, then tribunal has to entertain claim petition without taking note of the date on which the accident had taken place. The claim petition cannot be dismissed on the ground that such petitions were beyond the period of limitation, particularly when section 166(3) has to be given full effect so that object of deletion of the said section by the Parliament is not defeated. If a victim of the accident or heirs of the deceased victim can prefer claim for compensation although not being preferred earlier because of the expiry of the period of limitation prescribed, how the victim or heirs of the deceased shall be in a worse position if the question of condonation of delay in filing the claim petition is pending in the tribunal. The Amending Act shall be of no help to such claim if the contrary view is taken.

5. In the above view of the matter, the appeal deserves to be allowed and is hereby allowed.

6. The impugned order dismissing the claim petition is quashed. The Motor Accident Claims Tribunal, district Kheda at Nadiad is directed to take the claim petition of the appellants on file and dispose it off in accordance with merits and law. No costs.

\*\*\*\*\*

amp/-